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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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EXAMINER
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ART UNIT	PAPER NUMBER
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17

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.	Applicant(s)
68/778,635	Robbiano et al
Examiner	Group Art Unit
Submited	1035

---The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address---

## Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 5/24/00
- ☒ This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 245-251 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 245-251 is/are rejected.
- Claim(s) \_\_\_\_\_ is/are objected to.
- Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All ☐ Some ☐ None ☐ of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of References Cited, PTO-892

Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948

Other \_\_\_\_\_

## Office Action Summary

Art Unit: 1635

## **DETAILED ACTION**

### ***Continued Prosecution Application***

1. The request filed on 5/26/00 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 08/978,635 is acceptable and a CPA has been established. An action on the CPA follows.

### ***Double Patenting***

2. Claims 245-247 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 255, 257, 259 of copending Application No. 08/978,636. Although the conflicting claims are not identical, they are not patentably distinct from each other for the same reasons of record as set forth in the Official Actions on the merits mailed 02/16/99 and 11/24/99.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Claim Rejections - 35 USC § 112***

3. Claims 245-251 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the

Art Unit: 1635

invention, for the same reasons of record as set forth in the Official Actions on the merits mailed 02/16/99 and 11/24/99.

***Claim Rejections - 35 USC § 102***

4. Claims 245-251 are rejected under 35 U.S.C. 102(e) as being anticipated by Sullenger et al. for the same reasons of record as set forth in the Official Actions on the merits mailed 02/16/99 and 11/24/99.

5. Claims 245-251 are rejected under 35 U.S.C. 102(e) as being anticipated by Hurwitz et al. for the same reasons of record as set forth in the Official Actions on the merits mailed 02/16/99 and 11/24/99.

6. Claims 245-251 are rejected under 35 U.S.C. 102(b) as being anticipated by DeYoung et al. for the same reasons of record as set forth in the Official Actions on the merits mailed 02/16/99 and 11/24/99.

Art Unit: 1635

This is a CPA of applicant's earlier Application No. 08/978,635. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

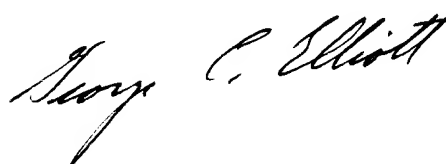
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Art Unit: 1635

Any inquiry concerning this communication or earlier communications from the examiner should be directed to *Mary M. Schmidt*, whose telephone number is (703) 308-4471.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, *George Elliott, Ph.D.* may be reached at (703) 308-4003.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.



George C. Elliott, Ph.D.  
Supervisory Patent Examiner  
Technology Center 1600

M. M. Schmidt  
June 10, 2000